

OPENNESS PROMOTES EFFECTIVENESS IN OUR NATIONAL GOVERNMENT ACT OF 2005 ("OPEN GOVERNMENT ACT OF 2005") (CORNYN-LEAHY)

Led by U.S. Senators John Cornyn and Patrick Leahy, the OPEN Government Act of 2005 is a bipartisan effort to achieve meaningful reforms to federal government information laws – including most notably the Freedom of Information Act of 1966 ("FOIA"). If enacted, the legislation would substantially enhance and expand the accessibility, accountability, and openness of the federal government. It has been nearly a decade since Congress has approved major reforms to FOIA. Moreover, the Senate Judiciary Committee has not convened an oversight hearing to examine FOIA compliance issues since April 30, 1992. (The Senate Homeland Security and Governmental Affairs Committee, which shares jurisdiction over federal government information laws with the Judiciary Committee, has not held a FOIA oversight hearing since 1980.)

This legislation is the culmination of months of extensive discussions between the offices of Senators Cornyn and Leahy and various members of the requestor community. The bill is supported by Texas Attorney General Greg Abbott and a broad coalition of organizations across the ideological spectrum, including:

- American Association of Law Libraries
- American Civil Liberties Union
- American Library Association
- American Society of Newspaper Editors
- Associated Press Managing Editors
- Association of Health Care Journalists
- Center for Democracy & Technology
- Coalition of Journalists for Open Government
- Committee of Concerned Journalists
- Education Writers Association
- Electronic Privacy Information Center
- Federation of American Scientists/Project on Government Secrecy
- Free Congress Foundation/Center for Privacy & Technology Policy
- Freedom of Information Center, University of Missouri
- The Freedom of Information Foundation of Texas
- The Heritage Foundation/Center for Media and Public Policy
- Information Trust
- National Conference of Editorial Writers
- National Freedom of Information Coalition
- National Newspaper Association
- National Security Archive/George Washington University
- Newspaper Association of America
- People for the American Way
- Project on Government Oversight
- Radio-Television News Directors Association
- The Reporters Committee for Freedom of the Press
- Society of Environmental Journalists

The Act contains important Congressional findings to reiterate and reinforce the view that the Freedom of Information Act establishes a presumption of openness, and that our government is based not on the need to know, but upon the fundamental right to know. The Act also contains over a dozen substantive provisions, designed to achieve the following four objectives:

- (1) Strengthen FOIA and close loopholes
- (2) Help FOIA requestors obtain timely responses to their requests
- (3) Ensure that agencies have strong incentives to act on FOIA requests in a timely fashion

- (4) Provide FOIA officials with all of the tools they need to ensure that our government remains open and accessible

STRENGTHEN FOIA AND CLOSE LOOPHOLES

- Ensure that FOIA applies when agency recordkeeping functions are outsourced
- Establish a new open government impact statement, by requiring that any future Congressional attempt to create a new FOIA exemption be expressly stated within the text of the legislation
- Impose annual reporting requirement on usage of the DHS disclosure exemption for critical infrastructure information
- Protect access to FOIA fee waivers for legitimate journalists, regardless of institutional association – including bloggers and other Internet-based journalists
- Provide reliable reporting of FOIA performance, by requiring agencies to distinguish between first person requests for personal information and other kinds of requests

HELP FOIA REQUESTORS OBTAIN TIMELY RESPONSES

- Establish FOIA hotline services, either by telephone or on the Internet, to enable requestors to track the status of their requests
- Create a new FOIA ombudsman, located at the Administrative Conference of the United States, to review agency FOIA compliance and provide alternatives to litigation
- Authorize reasonable recovery of attorney fees when litigation is inevitable

ENSURE THAT AGENCIES HAVE STRONG INCENTIVES TO ACT ON FOIA REQUESTS IN TIMELY FASHION

- Restore meaningful deadlines for agency action by ensuring that the 20-day statutory clock runs immediately upon the receipt of the request
- Impose real consequences on federal agencies for missing statutory deadlines
- Enhance authority of the Office of Special Counsel to take disciplinary action against government officials who arbitrarily and capriciously deny disclosure
- Strengthen reporting requirements on FOIA compliance to identify agencies plagued by excessive delay, and to identify excessive delays in fee status determinations

PROVIDE FOIA OFFICIALS WITH THE TOOLS THEY NEED TO ENSURE THAT OUR GOVERNMENT REMAINS OPEN AND ACCESSIBLE

- Improve personnel policies for FOIA officials to enhance agency FOIA performance
- Examine the need for FOIA awareness training for federal employees
- Determine appropriate funding levels needed to ensure agency FOIA compliance